No. 170.

Brf. of Rodey for Appellee.

Filed Jan. 31, 1902.

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 170.

THE UNITED STATES, APPELLANT,

vs.

MARGARITO BACA.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF ON BEHALF OF MARGARITO BACA, APPELLEE.

B. S. RODEY,
Attorney for Appellee.

(17,922.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States

OCTOBER TERM, 1901.

No. 170.

THE UNITED STATES, APPELLANT,

vs.

MARGARITO BACA.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF ON BEHALF OF MARGARITO BACA, APPELLEE.

Statement.

Counsel for appellant has made a reasonably fair statement of this case in his brief. It is therefore not necessary to repeat it here in detail. There being but one question in the case for the consideration of the court, the following brief summary of facts will, perhaps, suffice:

In about the year A. D. 1768 the governor and captain general of the then Spanish ultramarine province of New Mexico made a grant of land, comprising a tract, which, as

surveyed in about the year A. D. 1878, amounted to 12,207.08 acres, to Baltazar Baca and his two sons. The land is situated in what is now central Valencia county, in the Territory of New Mexico, northwest of the Indian pueblo of Laguna and southwest of the hamlet of Cebolleta. The grantees went at once into possession, and through their descendants so continued in possession of and to live upon the same ever since.

In 1860, while appellees were thus in possession of the land, Congress, by an act of June 21 of that year, confirmed the "Town of Cebolleta land grant" to its people, which, it is contended, was confirmed for many thousands of acres more than it should have contained, and later, by the act of March 3, 1869, confirmed to the people of the Indian pueblo of Laguna what is known as the "Paguate Purchase" land grant, and patents issued accordingly to the grantees. These two land grants thus confirmed and patented adjoin each other and form a large compact body of land of some 275,000 acres, and includes within its boundaries the whole of the comparatively small tract in question. (See transcript of record, with its accompanying maps.)

In 1874, the claimants of the grant in question, being still, as aforesaid, in possession of the same and living upon it, proved up their title before the then surveyor general of the Territory of New Mexico under the eighth section of the act of Congress of July 22, 1854, and that official, finding the archive evidence and the title perfect, recommended the same to Congress for confirmation (Record, p. 9). Congress, however, never took any action upon it.

In 1893, shortly after the creation of the Court of Private Land Claims, appellee filed a petition before it for the con-

firmation of the tract to him and his co-owners. On the trial he made out a perfect case, and the court held that he and his co-owners (the legal representatives of the original grantees) were vested with a complete, valid, and perfect title in and to the grant, as will be seen by the decree of the court, which is as follows:

"This cause having heretofore come on to be heard upon the pleadings and exhibits on file, and upon full and legal proofs introduced and taken in the cause, both written and oral, and upon the original and other documents regarding said claim from file number 104 in the office of the surveyor general of the Territory of New Mexico and from other sources in said office, and the court having considered the same and having heard counsel for all of the parties to the cause, and being fully advised in the premises, and on due consideration thereof, doth make the following findings of fact and law, that is to say:

"1. That in the year A. D. 1768, a valid and perfect title in fee-simple to all of the land of the Sitio de San Jose de Encinal, situated in what is now Valencia county, New Mexico, was by the proper officers of the Spanish government, the then sovereign power of what is now the Territory of New Mexico, granted in equal shares unto Baltazar Baca and his two sons, and which said tract of land, situated in said county as aforesaid, was and is described as follows, that is to say: it is bounded on the east by a table-land; thence it extends westward five thousand Castilian varas to a sharp-pointed black hill; on the north it is bounded by the Cebolleta mountain; on the south it is bounded by some white bluffs, at whose base runs the Zuñi road—all as the same is known and designated upon the maps, plats, and surveys in file number 104 in the office of the surveyor general of the Territory of New Mexico.

"2. That such title so remained in said grantees and their successors from thence hitherto, and up to and including the time of the cession of the land now comprised in the Territory of New Mexico to the United States and has so continued from thence to the present time.

"3. That the said grantees and their successors have from

the time of the making of said grant complied with all conditions necessary to the validity of the same.

"4. That such title in such grantees and their successors to said tract of land was and is complete, valid, and perfect, and so was at the date of the cession of the land now comprised in the Territory of New Mexico to the United States by the treaty of Guadalupe Hidalgo; and the same was and is such a title as the United States is bound to recognize and confirm by virtue of said treaty and otherwise.

"5. That the claimant, Margarito Baca, is a lineal descendant of the said Baltazar Baca, one of the original grantees.

"6. But the court further finds, as matter of fact, that the land comprised within the tract aforesaid is included within the outboundaries of the Town of Cebolleta grant, reported number 46, and the Paguate Purchase tract, reported number 30, the said Cebolleta grant having been confirmed to the claimants thereof by an act of Congress approved March 3d, A. D. 1869, and thereupon duly patented to said claimants by the proper authorities of the United States, and the said Paguate Purchase tract having been confirmed to the Indians of the pueblo of Laguna by an act of Congress approved June 21, 1860, and thereupon patented to said pueblo by the proper authorities of the United States.

"7. Wherefore it is considered and adjudged by the court that a complete, valid, and perfect title in and to the tract of land above described was and is vested in the said Baltazar Baca and his two sons and their successors in interest, but that notwithstanding such fact that this court is without jurisdiction, because of the patents for the said land so as aforesaid issued by the United States, to decree and confirm the same unto them, or to order a survey thereof for such purpose, and for such reason no other or different relief than the pronouncing upon the character of the claimant's title as aforesaid is or will be granted by this court, and it is so ordered."

Before entering the foregoing decree, the court below rendered an opinion in the case (Record, pp. 65, 66), but because what is known as the "Cuyamungue Case," U. S. *vs.* Conway, 175 U. S., 60, and the case of Real de Dolores Del

Oro *vs.* The United States, *id.*, 71, had theretofore been argued before it, and were then pending in this court on appeal, it suspended its decree of confirmation (Record, p. 69) until those cases should be decided, and, when that was done, entered the final decree as aforesaid. It will thus be seen that the Court of Private Land Claims, when it entered its decree above set out in full, did so with full knowledge of and in the light of the mandate and authority of this court. For that reason it cannot be contended that the court below made no effort to conform to the law.

ARGUMENT.

The contention of appellant here, as appellee understands it, is against the action of the court below in granting any relief whatever to appellee, and in not dismissing his petition for want of jurisdiction.

This raises the question, pure and simple, and it is the only question in the case, as to whether or not the Court of Private Land Claims, under the act creating it, 26 Stats., 854, is clothed with the duty, or vested with the power, to "pronounce upon the character" of claimant's titles to land under a Spanish or Mexican grant, when Congress has theretofore, however inadvertently or wrongfully, patented the whole of the same to some one else?

The Court of Private Land Claims, after due and mature consideration of the subject, and after viewing it in the light and under the command of this court, as the law is stated in the opinions above referred to, held that it had such power, hence the decree complained of.

The decision of this question must necessarily turn upon the construction to be given to the land-court act. Those portions of it that apply here are as follows:

Section 6 of the act provides, among other things: * * *

"And the said court is hereby authorized and required to take and exercise jurisdiction of all cases or claims presented by petition in conformity with the provisions of this act, and to hear and determine the same, as in this act provided, on the petition and proofs in case no answer or answers be filed after due notice, or on the petition and the answer or answers of any person or persons interested in preventing any claim from being established, and the answer of the attorney for the United States where he may have filed an answer, and such testimony and proofs as may be taken." * * *

Section 8 of the act provides:

"That any person or corporation claiming lands in any of the States or Territories mentioned in this act under a title derived from the Spanish or Mexican governments that was complete and perfect at the date when the United States acquired sovereignty therein, shall have the right (but shall not be bound) to apply to said court in the manner in this act provided for other cases for a confirmation of such title; and on such application said court shall proceed to hear, try, and determine the validity of the same and the right of the claimant thereto, its extent, location and boundaries, in the same manner and with the same powers as in other cases in this act mentioned.

"If in any such case, a title so claimed to be perfect shall be established and confirmed, such confirmation shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such land that shall have been disposed of by the United States, and always subject to and not to affect any conflicting private interests, rights, or claims held or claimed adversely to any such claim or title, or adversely to the holder of any such claim or title. And no confirmation of claims or titles in this section mentioned shall have any effect other or further than

as a release of all claim of title by the United States; and no private right of any person as between himself and other claimants or persons, in respect of any such lands, shall be in any manner affected thereby." * * *

The fourth subdivision of section 13, which is the particular clause that appellant claims is fatal to the decree below, is as follows:

"No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress, or under its authority."

It is respectfully submitted that the Court of Private Land Claims acted entirely within its jurisdiction when it "pronounced upon the character of claimant's title" in this case. Does not the very act creating the court, as quoted above, say, "If in any such case, *a title so claimed to be perfect* shall be established and confirmed; such confirmation shall be for as much land only as such perfect title shall be found to cover, always excepting any part of such land that shall have been disposed of by the United States"? Can it make any difference that it has all been disposed of? Must not the court establish the title, even though it cannot confirm the land in the claimant?

Now, suppose the Government of the United States had wrongfully disposed of every acre but one of a land grant containing 100,000 acres and the true owner should come before the land court and show a perfect title to the entire tract, it will surely not be contended but what the court would have the right and would be bound to "pronounce upon the character of the title" to such entire tract, although it could confirm to him and give him possession of but a single acre. It would seem from the parts of the land-

court act quoted above that the court is "required to take and exercise jurisdiction of *all cases* or claims presented by petition in conformity with the act, and to hear and determine the same as in the act provided;" and, further, in section 8, also quoted above, it is provided that any person claiming lands in any of the States and Territories mentioned in the act under a title that was *complete and perfect* at the time when the United States acquired the sovereignty, *shall have the right* (but shall not be bound) to apply to said court in the manner in this act provided for other cases for a confirmation of such title. Now, mark the succeeding language, "If in any such case a title so claimed to be perfect shall be *established and confirmed*, such confirmation shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such lands that shall have been disposed of by the United States." Now, what does this language mean unless it means that a person having a perfect title is entitled to and has the right to come into the court and have the court say that his title is perfect? The fact that the United States may have wrongfully disposed of his land, and that the court can give him no relief as to that, does not affect his right to come into the court which is the only tribunal with jurisdiction to try such matters as between the claimant and the United States.

Such claimant, as between himself and the Government, never had his title passed upon by any tribunal. Is he not required, as matter of law, before he can assert his title in the local courts as between himself and the United States, to go into the land court and have it say whether he has any title at all as against the Government? Even though

it can be said under the ruling of this court in the Ainsa case, 175 U. S., 76, that the local courts of New Mexico, pending the existence of the land court, have jurisdiction to pass upon perfect titles that were never submitted either to Congress or the Court of Private Land Claims, still is not that jurisdiction simply concurrent, and is not the claimant to such a perfect grant entitled to elect which of the courts he will first go into? In the land court he can have the benefit of the land-court act, which makes the archives in the surveyor general's office evidence in his favor, and he can have the benefit of its rules and liberal mode of procedure, it not being "limited to the dry technical rules of a court of law," as was held in Ealy's case, 171 U. S., 220. If the claimant was the owner of 100,000 acres of land under perfect Spanish title, and the Government had not interfered in any manner with such land, save to assume that it was public domain, such claimant would surely have the right under this act to come into the land court and have his title confirmed, and the grant would at once be segregated from the public domain.

The whole tenor of this land-court act is to the effect that the desire of the Government in creating the court was to settle all questions of title as between itself and all claimants to any portion of the public domain, and not to interfere in any manner with the conflicting titles of owners or claimants as between themselves (Conway's case, *supra*). Every patent the Government issues under the decrees of this court is a mere quitclaim between the Government and the grantee. Even though the Government may have quitclaimed the land to one person, the question of the perfect title of somebody else to that same land as between such

person and the United States may still be a subject for investigation. Some court will have to pass on it. The patent wrongfully issued by the Government for it is a mere nullity. Then why cannot this land tribunal "pronounce upon such title"?

This claimant is not calling upon the Government to make him a grant. His title is perfect already. It is superior to any right of the Government, save that of sovereignty. All he gets by this action of the land court is that it finds that he has a perfect title. His remedy thereafter is in another tribunal.

They are cases, that Congress had in view when it used the language above quoted, that "no claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress or under its authority," as, for instance, the case of Las Animas Land Grant Company *vs.* United States, 179 U. S., 200, which was a case where Congress itself tried the question of the claimant's right to the grant and confirmed and patented a portion only of his claim, and he afterwards came into the land court and tried to get from it what he failed to get from Congress—that is, the whole of his original claim.

All the parties in interest—that is, the town of Cebolleta people and the Indians of Pueblo Laguna, the patentees of the Government of different portions of this same land—were in court when this question was passed upon, and had their day. The court, under the ruling in the Conway case, because of the patents issued to such other grantees, refused "to decree and confirm" the land to this appellee, and gave him no relief save "the pronouncing upon the character of his title."

Surely appellee, under the land court act, and in all equity and good conscience, is entitled when he goes into the local courts to have his claim clothed with the dignity and sanctity of this mere "pronouncement of the Court of Private Land Claims as to the character of his title," as against the dignity of a United States patent, perhaps wrongfully or inadvertently issued to his opponents, for property to which the United States never had title.

Finally, it is most respectfully submitted that the Court of Private Land Claims has in no sense contravened or exceeded its powers under its creative act, but has carefully avoided overstepping the same, and has but done this appellee the meager justice which the limitations upon its power, as set out in the opinion of this court in the Conway case, *supra*, permitted it to do, and that therefore the decision of the court below should be affirmed.

All of which is most respectfully submitted.

B. S. Rodey,
Attorney for Appellee.